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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re TRINITY F., a Person Coming Under
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

LES F.,

Defendant and Appellant.

D053686

(Super. Ct. No. NJ12407)

APPEAL from orders of the Superior Court of San Diego County, Michael J.

Imhoff, Judge. Affirmed.

Les F. appeals orders terminating his parental rights to his daughter, Trinity F., and referring her for adoption. He contends the court violated his right to due process by terminating his parental rights without a finding he was an unfit parent, and there was not substantial evidence to show Trinity was likely to be adopted. We affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

In July 2002 shortly after her birth, Trinity became a dependent child of the juvenile court based on her mother, Roxanne P.'s, substance abuse. The court ordered reunification services for Roxanne. Les was incarcerated at the time. In September the court found Les was Trinity's biological father. It ordered services for Les and found it would be detrimental to place Trinity with him.

In January 2003 after Roxanne had made progress with her reunification services, Trinity was placed with her at a treatment facility. Les remained incarcerated; he worked on his case plan while in prison. On March 17 the juvenile court terminated jurisdiction. It ordered Roxanne and Les would have joint custody. Les apparently was still incarcerated.

In May 2006 Trinity was again taken into protective custody. The San Diego County Health and Human Services Agency (the Agency) petitioned on her behalf under Welfare and Institutions Code¹ section 300, subdivision (b) because of domestic violence between Roxanne and her boyfriend, Jose M. Les was in prison at the time. Roxanne said she had not had contact with him since his arrest.

Les was not present at the detention hearing. He sent a letter indicating he would not attend because he was in a training program at the prison. He said he had not seen

¹ Statutory references are to the Welfare and Institutions Code.

Trinity since she was about two years old and had not had contact with Roxanne for about one year. The court ordered Trinity detained.

On August 10, 2006, the court granted Les presumed father status. The court found the allegations of the petition true, removed Trinity from Roxanne's custody and ordered services.

For the six-month review hearing the social worker reported Les was attending Narcotic Anonymous meetings and having vocational training in prison. He had weekly telephone contact with Trinity and sent her cards and letters. At the six-month review hearing on May 25, 2007, the court continued Trinity in out-of-home care, found it would be detrimental to return her to her parents, and ordered the Agency to provide a prison parenting packet and services for Les.

Les was released from prison on July 23, 2007, and provided with a case plan. In a report dated October 15 the social worker recommended Les's services continue to the 18-month date. He was visiting Trinity regularly and was drug testing and attending therapy. However, on November 15, 2007, the social worker changed the recommendation to terminating services for both parents because it was discovered Les had been living with Roxanne after saying he was not in contact with her. Les also had been missing therapy and visits with Trinity and had been leaving visits early. Roxanne had stopped services and had had no contact with the Agency for several months.

At the 12-month hearing on January 18, 2008, the court found Les had made some progress with his case plan, but returning Trinity to either parent would be detrimental.

The court noted the case was already past the 18-month date. It terminated services and set a section 366.26 hearing.

The social worker recommended parental rights be terminated and Trinity be adopted. The social worker said Trinity's developmental abilities and motor skills had improved to the average range while she had been in foster care. However, Trinity had some behavior problems, including anxiety, emotional reactivity, inattention and aggression, and she showed symptoms of reactive attachment disorder and attention deficit hyperactivity disorder (ADHD). Trinity's therapist said in the two months Trinity had been in therapy she had already made progress. Trinity showed anxiety regarding Roxanne's absence, but was beginning to feel secure with her relative caregiver, who was her maternal aunt. The social worker reported Trinity's caregivers had cared for her for two years and wanted to adopt her. Fifteen other families were interested in adopting a child like Trinity.

Of the 15 visits Les had been offered since his release from prison, he had cancelled two, failed to attend one, and left at least 20 minutes early from five. He had not appeared for the only visit scheduled after the 12-month hearing and did not contact the Agency to arrange more visits.

At the section 366.26 hearing, the court noted that Les had been returned to custody. It considered testimony, documentary evidence and argument concerning Trinity's adoptability and found Trinity was likely to be adopted by her caregivers if parental rights were terminated and she was also generally adoptable. It found none of

the exceptions to termination of parental rights and adoption of section 366.26, subdivision (c)(1) applied. It terminated parental rights and referred Trinity for adoption.

DISCUSSION

I. Due Process

Les contends the court violated his right to due process by freeing Trinity for adoption without finding he was unfit.² He argues Trinity was removed from Roxanne's custody, and the court's findings of detriment to returning her to parental custody were based only on his incarceration and on Roxanne's unsupported report that he was living with her.

A. *Statutory Framework*

Parents have a fundamental interest in the care and custody of their children. Thus, they have due process protections in juvenile dependency proceedings. (*Santosky v. Kramer* (Santosky) (1982) 455 U.S. 745, 758.) Before the state may terminate the parent's parental rights, "due process requires that the State support its allegations by at least clear and convincing evidence." (*Id.* at pp. 747-748; *In re Gladys L.* (2006) 141 Cal.App.4th 845, 848.) "California's dependency system comports with *Santosky's* requirements because, by the time parental rights are terminated at a section 366.26 hearing, the juvenile court *must* have made prior findings that the parent was unfit." (*In re Gladys L., supra*, at p. 848; *Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 254.)

² In 1969 the Legislature dropped the standard, "parental unfitness," in favor of the requirement the court make a finding an award of custody to the parent would be "detrimental to the child." (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 224, fn. 3.)

Before terminating the parental rights of a presumed father, a court must find by clear and convincing evidence that the child would face a risk of detriment in the parent's custody.

(*In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848.)

B. *Application*

Les has not shown a denial of due process. At the six-month review and the 12-month hearings, the court specifically found by clear and convincing evidence that returning Trinity to Roxanne or Les would be detrimental. Substantial evidence supports the findings of detriment. Les was incarcerated during most of Trinity's life. After his release, he began participating in services and had visits with Trinity, but then he lied to the court, the social worker and his therapist, saying he did not know Roxanne's whereabouts when there were indications that they had been living together. Also, after services were terminated, Les stopped visiting Trinity entirely, and, by the time of the section 366.26 hearing, he was incarcerated again and thus again not available to be a parent to her. Substantial evidence supports a finding of detriment.

This case contrasts with *In re Gladys L.*, *supra*, 141 Cal.App.4th at p. 848 and *In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1215, where the reviewing courts reversed orders terminating the parents' parental rights because there had never been a findings it would be detrimental to return the children to the parents' custody. Here, the court made the required findings and the findings are supported by substantial evidence. Les has not shown a denial of due process.

II. Likelihood of Adoption

Les also asserts the court erred by finding Trinity was likely to be adopted in a reasonable time. He argues she had behavioral difficulties, including anxiety, emotional reactivity, inattention and aggression, and symptoms of ADHD and reactive attachment disorder. He notes that she had lived with her caregivers for two years, but was just beginning to feel secure.

A. *Statutory Framework*

Before a court frees a child for adoption it must determine by clear and convincing evidence that the child is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) "In resolving this issue, the court focuses on *the child*--whether his age [or her age], physical condition and emotional state make it difficult to find a person willing to adopt him [or her]." (*In re David H.* (1995) 33 Cal.App.4th 368, 378.) If a child is generally adoptable, we do not examine the suitability of the prospective adoptive home. (*In re Scott M.* (1993) 13 Cal.App.4th 839, 844.) However, when the child is deemed adoptable based solely on a particular family's willingness to adopt the child, the trial court must determine whether there is a legal impediment to adoption and whether the prospective adoptive parent is able to meet the needs of the child. (*In re Carl R.* (2005) 128 Cal.App.4th 1051, 1061; *In re Helen W.* (2007) 150 Cal.App.4th 71, 80.) "On appeal, we review the factual basis for the trial court's finding of adoptability and termination of parental rights for substantial evidence." (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732.) The appellant bears the burden to

show that the evidence is insufficient to support the court's findings. (*In re Geoffrey G.* (1979) 98 Cal.App.3d 412, 420.)

B. *Application*

It is arguable that Trinity is not generally adoptable because of her behavioral difficulties and symptoms of ADHD and reactive attachment disorder. However, Trinity is specifically adoptable. The evidence did not show any legal impediments to adoption, and showed that her relative caregivers were providing good care to her and understood her needs. At the time of the hearing, they had cared for her for two years. They had adopted another child 11 years earlier, and there was no concern they would not be approved to adopt. They had begun the adoptive home study, and the social worker believed the approval would be forthcoming in about three months. Trinity had made great strides with her developmental and motor skills while in their care and she had begun to feel secure in their home. The caregivers were committed to adopting her and having her be a permanent part of their family. "[W]here there is no evidence of any specific legal impediments to completing the adoption process, parental rights may be terminated to a specifically adoptable child regardless of whether a home study had been completed." (*In re Brandon T.* (2008) 164 Cal.App.4th 1400, 1410.) Because clear and convincing evidence showed Trinity is specifically adoptable, Les has not shown a lack of substantial evidence to support the finding of adoptability.

DISPOSITION

The orders are affirmed.

NARES, J.

WE CONCUR:

McDONALD, J.

BENKE, Acting P. J.